Uber Comes to Town: How to Level the Playing Field in a TNC World

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Since the advent of Transportation Network Companies (TNCs) such as Uber and Lyft, many laws have been enacted to permit them to enter the market, through partial deregulation and self-regulation. In the US, these statutes have been primarily passed at the state level after TNCs circumvented local opposition.[1] The result is that TNCs–a hybrid form of "on-demand" taxi service using a taximeter–like fare calculator inside a smartphone application (app)–often operate with unlicensed vehicles and drivers, and with little or inadequate insurance coverage. These new cookie-cutter laws define TNCs as performing the same exact activity performed by taxicabs and limousines, i.e. transporting a paying passenger from point A to point B, but specifically exclude incumbent operators who could benefit economically from relaxed regulatory burdens.[2]

There is no question that the disruption created by TNCs has set the stage for a paradigm shift. Decades of transportation policy, which sought to minimize personal motor vehicle (PMV) usage, is now swamped by millions of additional TNC miles being driven, often by less experienced and part-time drivers. TNC drivers are encouraged by so-called "surge pricing" to work during peak demand times when traffic and environmental conditions may be at their worst.[3] They may also be encouraged, due to significant fare reductions recently enacted, to work even longer hours to achieve the same economic benefits, possibly contributing to driver fatigue and unsafe working conditions.

With every cloud, there is hope for a silver lining. With TNCs, the solution could be an awakening of high-level transportation policy planning that re-imagines the transportation ecosystem for our sustainable future, with all modes and technologies in mind. Whether regional and metropolitan planning organizations. local for-hire or taxicab regulators, or local or regional departments of transportation and/or traffic agencies, all sectors of the industry must work together to plan the future role of taxicabs, for-hire vehicles, TNCs, and all other forms of transit. Further, governmental bodies must work with the private sector, as well as academia, to quickly envision comprehensive multi-modal transportation plans.

Allowing disruptive profit-motivated companies to make their own laws and policies while violating established regulations that, inconveniently, do not conform to their business models, leaves decades of mobility management and transportation planning to discourage PMV use at the curb. The goal should be to fit these new modes into a broader plan that encourages equitable, safer, and more environmentally sustainable transportation solutions, while preserving or redirecting the roles of incumbent stakeholders.

In the aftermath of TNC disruption, governments are now beginning to view this planning process as not just about road and mobility management, but also involving shared mobility,[4] connected[5] and autonomous vehicle technology,[6] smartphone technology, and data sharing platforms. All of these new technologies can increase inter– and intra-modal connections among public and private transit, including airports. To this end, seminal questions that must be addressed include: Should federal, state and/or local governments regulate, and should there be street enforcement, automated enforcement, and/or self-regulation with auditing?

I. Who Should Regulate? – Federal, State and/or Local Roles

Taxicab service (street hails, taxicab stands, and pre-booked service) has traditionally been regulated locally. For-hire services, which include liveries, black cars, sedans, and limousines that are pre-arranged or pre-booked (not street hails) have been regulated more loosely than taxicabs at the state and local levels. Federal regulation is unlikely to work logistically or legally, given the parameters set by the Constitution, which only permits regulation for vehicles engaged in interstate commerce. However, federal laws and appropriations to provide research, incentives, disincentives, and technology pilot programs could help guide more uniform state and local policy.

TNCs have, for the most part, pushed for statewide regulation, because doing so involves less lobbying, legal, and media-related resources than engaging with a much larger number of municipalities. TNCs recognize that states typically lack the same enforcement capabilities as localities, and it is no mistake that state regulation has

been sought. They have been largely successful in this effort; today, 46 states have passed TNC laws, in many cases preempting localities from enacting their own regulations.[7] The result has often been an inadequate patchwork. While it is difficult to enforce safety standards at a state level, some safety standards could be uniform with regard to basic safety and licensing of professional drivers. For all private for-hire transportation including TNCs, minimum requirements should include: uniform insurance coverage (whether on- or off-duty); biometric (fingerprint) background checks;[8] reasonable licensing fees that cover the cost of issuing licenses; driving record licensing restrictions; and uniform rules of driver conduct. Although states could set licensing criteria or issue licenses, enforcement should always be either local or regional for all for-hire modes.

Other issues are best left to municipalities: setting fares; regulating for consistency and transparency, when necessary, for for-hire vehicles or pre-arranged fares; limiting the number of permits; and assessing supply and demand.

These rules should be locally-sourced, given diverse standard of living and wage considerations, and demand for myriad types of services, across localities, regions and neighborhoods.[9] Sustainability initiatives should also be implemented at a local level, as street grids and transport systems, population density and road configurations vary widely. Managing the growth of TNCs is a worthwhile endeavor, both for the economic benefit of drivers and for traffic congestion, and this analysis is simply better performed at a local or regional level.

Despite these challenges, states can, in theory, effectively protect consumers and set overall "baseline" licensing standards for professional drivers, including the safety and accountability of the vehicle, driver and transportation business. These protections should apply to every community and passenger in the state, and could include penalties for overcharging passengers and having improper levels of insurance, as well as mandating vehicle inspections, emissions and licensing standards,– all to be enforced at a local level. (Multiple permits and redundant local licensing fees can be reduced by regulating at a state or regional level, as many car services currently must display multiple municipal permits on their vehicles to transport passengers between adjoining intra-state jurisdictions).

II. How to Most Effectively Level the Playing Field between TNCs and Taxicabs

The term "Leveling the Playing Field" (between TNCs and taxi companies) was first used in early 2015 at a conference of transportation regulators, and is now common parlance among industry stakeholders, officials, the media, and academics. The phrase seeks to address the regulatory and financial advantages that TNCs have over the incumbent taxicab, for-hire and limousine industries, all of which are engaged in virtually the same regulated activity. There are many ways a "level playing field" can be accomplished, and the bigger question is: do policymakers apply a "Band-Aid" approach that does not narrow the equity gap, or do they engage in radical, but necessary, reconstructive surgery to permanently fix the underlying conditions?

The same basic public safety and fiscal responsibility standards should apply for all vehicles and drivers - whether TNCs, taxicabs, liveries or limousines. The activity subject to regulation involves a simple premise: passengers reserving or hailing a vehicle for hire to go from one point to another. Ensuring that drivers meet basic safety standards, subjecting them to accurate criminal background checks, and requiring them to obey conduct standards, is a universal necessity, and the process should be exactly the same for any drivers, vehicles or businesses engaging in for-hire transportation. Several cases have addressed the disparity in treatment between taxis and TNCs.[10] Most recently, in June 2017, the U.S. District Court for the Eastern District of Pennsylvania refused to dismiss Philadelphia taxicab operators' claims that the Philadelphia Parking Authority (PPA) violated their Equal Protection rights and that the PPA's refusal to regulate TNCs amounted to an unlawful taking of the value of their medallions.[11] Irrespective of constitutional challenges, there are also ethical and fair competition issues regulators and policy-makers must address. The question is not how TNCs and incumbent industry players differ – because, in terms of safety concerns, they do not.

It may be just a matter of time before TNC laws are vacated or revised due to the realization that disparate standards without a rational basis is bad policy. Either way, legislators may find themselves back at the proverbial drawing board. The question then becomes not whether the playing field is leveled, but where will that level be? The answer is probably somewhere in between the two constituents' positions: There will be stricter standards than in current TNC laws, but partial deregulation for all modes may also occur (benefitting both TNCs and incumbents).

Thus far, TNCs have avoided serious legal challenge, allowing them to gain market share–while expecting that at some point, courts and/or public opinion may shift the balance. This shift may only happen after years of legal, media, and public relations battles, but there lies an opportunity to re-craft the entire system in a manner that benefits all stakeholders. The key issues in such a re-balancing will be: (A) Driver Criminal Background Checks and Vetting; (B) Automobile Liability and Related Insurance Coverage; (C) Licensing Fees, Limits and Market-Entry; (D) Data Security and Privacy: (E) Sustainability; (F) Equity and Underserved Community Service; (G) Wheelchair Accessibility; (H) Universal Taxi Apps; and (I) Self-regulation.

A. Criminal Background Checks- Name Checks or Biometric Fingerprints

The issue is not to create a different scheme of background checks for TNCs, but to have consistency in the type of checks, and who performs them. State laws should require all drivers of vehicles for hire to undergo biometric fingerprinting performed by the government (or a government contractor), and every state should authorize federal access and rap-back service[12] for localities, so as to be notified of new convictions.

In 2015, Uber found that more than 500 of its Houston drivers were operating

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without a proper license and had not undergone the City's fingerprint-based background check.[13] In April 2017, it was revealed that Massachusetts had revoked the operating authority of more than 8,000 TNC drivers under a new state background check system. The state reviewed the records of nearly 71,000 drivers who had already passed the TNCs' own background check and rejected 8,206 (about 11 %). According to the report, "[h]undreds were disqualified for having serious crimes on their record, including violent or sexual offenses, and others for driving-related offenses, such as drunken driving or reckless driving."[14]

In a May 2015 study that I co-authored, a panel of academics, criminologists, law enforcement officials, and security experts endorsed several conclusions.[15] The following are our findings and recommended best practices:

Biometric criminal background checks are more accurate than self-regulated name checks. Name checks or social security checks are prone to data entry errors, rely on potentially erroneous information provided by the applicant, and do not automatically include "hits" for aliases. Fingerprint checks have a potential error rate of less than 1%,[16] while a name-based background check can have a potential error rate of 43%,[17] according to statistics developed by the Terrorist Screening Center.

Governmental regulatory agencies – not private companies – should apply uniform licensing standards to TNCs, taxicabs, and limousines. A uniform licensing standard and review procedure for driver criminal conviction histories provides for more accountability when the licensing decisions are made by the government– a neutral party with more secure and thorough background information.

Lesser criminal background checks for TNCs than for taxicabs and limousines may be unconstitutional;[18] it is bad policy, endangers the public, and fosters unfair competition. Requiring biometric checks for taxicabs and limousines, but only name checks for TNC drivers may result in an adverse report being placed in personnel files unseen by any government regulator. This double standard lacks a rational basis and is possibly unconstitutional. Drivers engaged by transportation apps and dispatch systems used by taxicabs, limousines, and TNCs are all performing the same service, regardless of the number of hours driven per week or the means by which the trip is procured.[19]

B.Insurance – 24/7 Commercial or Supplemental App On/Off Coverage

Insurance underwriting is typically regulated state-wide and is based upon risks associated with the types of licensed vehicles and their size or seating capacity. TNCs in many jurisdictions allow drivers to use personal auto insurance policies, which may not cover commercial uses such as TNCs, leaving passengers uninsured. In other jurisdictions, TNCs use supplemental insurance that attributes different coverage for different "periods" (*e.g.* when the app is on, when the driver has received a request but is not yet engaged in a TNC trip, and when the passenger is in the vehicle). This varied insurance raises concerns about potential gaps in coverage and the risk that claims may be denied. Even in those jurisdictions which require full commercial insurance, there are difficulties associated with verifying that the insurance is in fact in place. Accordingly, a uniform licensing standard, based upon vehicle capacity, risk and performance, and not simply upon the type of license, should be adopted. The same insurance products should be offered to all who fit into various underwriting categories, including workers' compensation coverage and supplemental policies.

What does not make sense is to allow PMV policies, which contain commercial or for-hire exclusions, to insure TNC drivers when backed with supplemental coverage by the TNC enterprise. This inequity allows TNCs to entice taxicab and black car owners/drivers to turn in their more expensive commercial policies and obtain cheaper personal primary auto insurance providing minimal coverage, with the extra insurance costs paid for by a multi-billion dollar company. It is a model that small and mid-size taxicab and limousine businesses cannot afford, and another instance where the TNCs' massive financial power is crushing an incumbent industry.

C. High TNC License Fees = Another Medallion System?

Also overlooked in the TNC debate are high licensing fees that may serve as a barrier to entry for small businesses or the incumbent industry. This not only hinders for-hire and limousine drivers from becoming TNCs, but also may be creating a new quasi-medallion system. For example, in Virginia and New York, there is an initial TNC license fee of $100,000 and a fee of $60,000 each year to renew.[22] New Jersey and Arkansas charge annual permit fees of $25,000 and $15,000 respectively. Georgia applies an fee system that scales depending on how many vehicles a TNC has operating. For 1,000 or more vehicles, the state charges $300,000 plus $1,000 for every additional 100 vehicles annually. For all the criticism levied by TNCs against entry limitations and the taxi medallion system, the TNCs have created a unique category wherein only well-financed companies can operate. These high licensing fees serve as a barrier to entry and create an even more uneven playing field.[25]

The long-term concern is that the TNCs, which are attempting to decimate taxicab medallion values, will, at some point - after completely controlling the market or being forced to limit the number of vehicles - acquiesce to a property right-based TNC medallion system. This move would be the ultimate in hypocrisy, but would nevertheless aid these billion-dollar companies to move forward with an Initial Public Offering (IPO); or, alternatively, to offset IPO-related criticisms of their alleged valuation once made public and scrutinized by financial experts.

D. Data Security and Privacy Protections

Data privacy and security standards are in place for taxicabs and limousines to ensure that the use of credit and debit cards is secure, and that passengers' personal and private data is not hacked or breached. There have been incidents of TNC data being hacked and accessed, and the same security measures that apply for data security standards (such as

Payment Card Industry (PCI) compliance standards) should also be in place for TNCs.[26]

A good model for smartphone app fare payment processes to protect passenger information would be the New York City for-hire vehicle standards. In New York City, if a base collects or maintains passenger "Personal Information," or passenger geolocation data, the base owner must file with the Taxi and Limousine Commission ("TLC") a current detailed information security and use of personal information policy. Such policy must address, at a minimum, access to passenger and driver personal information; passenger consent; legality of the purpose for data processing; notification procedures in the occurrence of a security breach; compliance with payment card industry standards; and use of passenger geolocation information.[29]

New York City law specifically requires any base that files a privacy policy with the TLC to comply with such policy. In addition, if the =base is required to make disclosures under New York State or Federal law regarding security breaches, the base owner must inform the TLC immediately following such disclosure(s).[31]

E. Ensuring Sustainable & Shared Mobility Growth

Unbridled growth is not good for driver economics, and could lead to market failures as well as increased traffic congestion and externalities. The taxicab medallion system was created following the Great Depression to address an oversupply of taxicabs and the inability of taxi drivers to earn a livable wage.[28] The best way to level the playing field is to monitor TNC growth and restrict it under certain circumstances.

In order for localities to better analyze the volume and nature of TNC activities on their roads, TNCs should be required to provide data in an anonymized format or lockbox via a third party administrator hired by the government. The law can create an exemption from Freedom of Information Laws (FOIL)[29] - which could otherwise be an open platform for public use of the data –and allow access exclusively to government regulators for clearly defined investigatory or data collection purposes (i.e. for fare increases; traffic or environmental studies; to investigate crimes and complaints; or to return lost property). There is a precedent where some states have made FOIL exemptions for information from financial firms managing the state's pension funds, finding that such information is proprietary.[30]

TNC growth could be capped, or monitored and managed, with incentives for vehicles and services that promote environmental sustainability, mitigate against emissions and congestion, and promote equity via wheelchair accessibility and service to underserved areas. Localities could tap into data and limit growth of traditional point-to-point TNC service while allowing for more clean air vehicles, wheelchair accessible vehicles, and shared ride services. Road, traffic planning, and mobility management should be factored into the incentive plan, which can include dedicated airport areas and stands, and dedicated lanes used exclusively for those services that assist in overall public policy goals. A variety of methods could be employed, including requiring that TNCs utilizing a certain number of vehicles commit to equitable and sustainable growth, or be subject to limits on growth that would only be relaxed following Environmental Impact Studies from independent and objective consulting firms hired by the government, but paid for by TNCs.

The future of urban transportation will rely, in part, on micro-transit and shared mobility. Long before autonomous and semi-autonomous or connected vehicles become commonplace, passengers will need to share common destinations and rides, not only to help the environment, but also to address economic inequality and to plug public transit gaps. The TNC model, through services such as Lyftline and Uberpool, as well as the first such service, Via in NYC, are true ride-sharing models that should be encouraged if TNCs are allowed to continue to their explosive growth.

F. Ensuring Equity - Affordable Rides and Fair Competition for All Passengers

A primary concern raised repeatedly relates to so-called "surge" or demand pricing. There are serious issues as to transparency for consumers, as well as the pressure on drivers to work during peak demand times that may include rush hour in dense urban environments and central business districts. To level the playing field, there are two possible solutions: (1) eliminate double and triple demand pricing for TNCs; or (2) allow taxicabs to engage in demand pricing on a similar scale. If "surge pricing" is allowed, it should be limited in some way during certain hours and locations throughout the community (i.e. central business districts during rush hour; or prohibited during emergencies like storms, blizzards or other catastrophes). The surge system should not be manipulated by TNCs or their drivers, and TNCs should supply data to regulators who can ensure that underserved communities are not surge-priced, or that a certain number of vehicles can be dedicated to operate in underserved areas.

G. Wheelchair Accessibility & Public Paratransit Reforms

One area where TNC laws fall short is the obligation, shared with taxicabs and for-hire vehicles, to provide equivalent service to disabled passengers.[31] The United States enacted laws such as Section 504 of the Rehabilitation Act of 1973[32] and the Americans With Disabilities Act (ADA) which prohibit discrimination on the basis of disability in, among other areas, transportation, and which require government-sponsored/subsidized transportation to provide accessibility for all U.S. residents, including for individuals with disabilities. The ADA specifically addresses the issue of private entities that provide taxicab service– a passenger cannot be discriminated against due to his or her disability and must be provided service at the same cost and without refusal by the driver to stow mobility devices.[33] This is also true for private entities that provide other transportation services, such as limousine companies and car services.[34]

Progress in transportation accessibility has been exhibited at both the federal and state level for taxicabs[35] and the for-hire vehicle industry[36] but slowed with the proliferation of TNCs. An inherent problem with the TNC business model in terms of providing accessible transportation for people with disabilities rests with "drivers who use their own vehicles." There are few TNC drivers who operate a wheelchair-accessible vehicle, and even those who do may not be properly trained to deal with the needs,

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etiquette and precautions appropriate for disabled passengers. Indeed, in a post on its website entitled "Greater accessibility for riders and drivers," Uber makes the claim that "all drivers on the Uber platform are able to accommodate folding wheelchairs," but offers no promise regarding those using motorized wheelchairs or who cannot be removed from the wheelchair itself.[37]

All TNCs should maintain a ratio of wheelchair accessible vehicles to the riding population, in accordance with demand. Public paratransit subsidies, which are being uniformly wasted on multi-passenger vans that operate on non-fixed routes without efficient or maximized usage,[38] could be redirected to wheelchair accessible taxicabs, liveries and/or black cars. This is already being done in jurisdictions such as New York City, as well as through a private contractor brokerage model between for-hire vehicle and taxicab companies and public transit agencies to deliver subsidized paratransit services under the ADA.[39] Allowing this model to be utilized only for taxicabs and for-hire vehicles would be a way to level the playing field, and TNCs should be compelled to purchase vehicles that are operated through government authorized/contracted brokerage companies. This would provide point-to-point and more affordable service via on-demand taxicabs or pre-arranged service at less than the cost on the open market.

In order to implement such a comprehensive plan, many options are available, but the essential ingredients are to consolidate funding and implementation resources for one established hotline or app for states and/or localities to deliver on-demand taxi, sedan and TNC services. This could be accomplished though establishing a Wheelchair Accessible Vehicle Fund via a third party administrator that would manage an accessible "lockbox" to consolidate all public and private funding. Standards could be developed to utilize such monies for brokerage contracts, dispatch centers, and/or app-based dispatching through public transit authorities and other localities, with specific compliance and allocation standards.[40]

H. Universal Taxicab Apps

One of the most promising new initiatives to increase the competitiveness of the taxi industry vis-à-vis TNCs is the development of new mobile e-hail applications for all taxis. An easy-to-use universal e-hail application will give customers the ability to electronically hail the entire fleet of available taxis and allow local taxi industries to more effectively compete with the user-responsiveness of TNCs. For TNCs and taxis, speed and reliability is dependent on the density of cars on the road.

There are currently several public projects underway in this area. A report which I authored entitled: *Study for a Centralized Application for Taxis in Montréal* analyzes various approaches by regulators to implement (either partially, or completely) the universal taxi application model. The report is based on a thorough analysis of primary data collected from regulators, the incumbent industry, other new market entrants, the riding public, and other sectors with a vested interest in the success of the for-hire industry. The study also provides a comprehensive review of the different app configurations being implemented by various jurisdictions: multiple government sanctioned applications;[45] single government branded applications;[46] single government branded application with competing applications;[47] open shared platform; government regulatory dashboard with competing applications; and private sector solutions.

In January 2016, the Mayor of Chicago announced that the City had chosen two providers, Arro and Curb, to provide universal taxi app service in Chicago.[50] All taxi drivers were required to use either Arro or Curb through their in-vehicle tablets or dispatch equipment starting February 1, 2016.

Each jurisdiction has unique characteristics not addressed by a "one-size-fits-all" approach. At this stage, it is too early to identify best practices that should be ubiquitously applied, but a universal app can help level the playing field and promote tourism and the taxi brand for the host city. Rebranding can also be used to revitalize a struggling taxi industry. In April 2017, Montreal announced a new branding initiative to standardize the look of the city's cabs in an effort to make them instantly recognizable and boost the local taxi industry.[51]

I. Self-Regulation, Government Regulation or a Hybrid-Tech Based Model?

The essence of TNC self-regulation is that "we can do it faster and better than government." TNCs claim that college students and part-time workers would be discouraged by the process of purchasing insurance, completing physical paperwork, leaving their homes or computers and undertaking a simple five-minute fingerprint check. While there may be some truth to the convenience factor, the motive of TNCs is to attract ever-more drivers, while managing and assuming the risks of some potentially unsafe or inexperienced drivers who slip through the cracks and cause harm to others. The self-regulation model allows the TNCs to control information pertaining to incidents such as sexual assaults and crashes. It discourages media coverage because such information – which is of public interest – is labeled as "proprietary" and not subject to public disclosure laws that keep such stories and criticism alive.[43] The self-regulation model is an effort to control information, reduce licensing standards and ultimately to facilitate a market takeover.

Objectively speaking, it is possible to permit modified self-regulation of transportation companies, as is done by the U.S. Department of Transportation's Federal Motor Carrier Safety Administration (FMCSA) with trucking and limousine companies engaged in interstate commerce. The FMCSA requires that interstate truckers and drivers obtain medical exams[44] and not work more than a certain number of hours during a time period for public safety reasons.[45] FMCSA-licensed carriers must collect information subject to Federal auditor compliance.[46] As such, the key ingredients for the success of a self-regulation system are auditing resources and significant penalties and fines to serve as an effective deterrent. Without unfettered access to TNC data to audit real-time performance and compliance at all levels, including the ability to impose significant fines, this model is doomed to fail. In general, governments, and not private parties, should be the ones who regulate; but if TNCs are allowed to engage in self-regulation, they should be required to pay for the enforcement resources and turn over their data to facilitate auditing and compliance.

Without unbridled access to TNC data to audit real-time performance and compliance, and the ability to impose significant fines, public safety is jeopardized and regulators' ability to make policy decisions hampered. Due to the lack of appropriate TNC standards or any commitment to enforcement at

the local level, TNCs should be required to provide data in an anonymized format or lockbox via an approved third party administrator hired by the government. The law can create an exemption from FOIL- which could otherwise be an open platform for public use of the data – and allow exclusive access to government regulators for clearly defined investigatory or data collection purposes (*i.e.* for fare increases; traffic or environmental studies; to investigate crimes and complaints; or to return lost property).

TNCs have lived up to their self-proclaimed identity as disrupters. They have often done so by operating illegally in jurisdictions and then arguing for new and less stringent laws than those regulating other for-hire vehicle services. When states have adopted these new, less stringent regulations, they have put the incumbent industry at a disadvantage, even though it provides virtually the same service as TNCs. One positive development from this disruption is that many jurisdictions may now re-evaluate all of their for-hire vehicle laws and overall transportation systems, as was done by Seattle and King County, in Washington State. When localities can implement laws that require TNCs to meet more stringent standards to protect public safety (and maybe deregulate in some areas–such as setting fares), the incumbent industry can better compete, moving closer to a middle ground where all can operate on a truly level playing field.

III. Recommended Solutions and Next Steps

Urban and transportation planners have their work cut out for them, but planning for the future must be done swiftly, with all parties at the table, and with "out-of-the-box" thinking. The Federal role should not be to regulate or force specific solutions, but to appropriate funding for conducting state-wide and regional planning studies to integrate all modes and technologies–and solve longstanding regional rivalries and jurisdictional disputes for the common good. The policy emphasis should be on promoting shared rides and micro-transit, zero emission- or clean air vehicles, wheelchair accessibility and affordable fares, with all modes working together to move people in a sustainable and efficient manner.

The TNCs must become part of the mainstream and the playing field leveled, not with "Band-Aid" approaches like allowing older cars for taxicabs, getting rid of security cameras for drivers or other insignificant and ineffectual deregulation attempts for the incumbent industry. Instead, safety and accountability standards must be increased for TNCs on background checks and insurance. Universal apps and smaller measures could help, but the most significant impact would be to: (1) institute growth limitations coupled with incentives that promote clean air, accessibility and service to underserved areas; (2) to equally apply, limit and/or eliminate surge pricing; and (3) to reform public paratransit by redirecting wasted multi-passenger van subsidies to wheelchair accessible taxicabs and for-hire vehicles with uniform dispatch systems or apps.

To plan these changes, transit planning agencies, airports, business improvement districts, incumbent for-hire and taxi industries, the TNCs and others must all be at the table, with government taking the lead. Self-regulation should be limited, and regulation and enforcement should be at the local level, especially economic and fare or curb space management. State regulations for uniform safety and licensing standards could work, but that must be coupled with local enforcement and appropriate penalties for non-compliance.

There are solutions for our transportation future, but our moment of opportunity is passing us by. We just need to think carefully, plan quickly and act, with government taking the lead–working closely with the private transit and technology industries.

Notes

1. As of June, 2017, 46 states and the District of Columbia have enacted some type of statewide TNC legislation. *See* https://tti.tamu.edu/policy/technology/tnc-legislation/.

2. For example, although many taxicab and limousine companies utilize a digital platform allowing passengers to book trips, Tennessee defines a TNC as "a business entity operating in this state that uses a digital network to connect riders to TNC services by TNC drivers" and explicitly distinguishes a TNC "from a taxi service, limousine service, shuttle service, or any other private passenger transportation services that are regulated pursuant to present law". *See* https://trackbill.com/bill/tn-hb992-transportation-dept-of-as-enacted-enacts-the-transportation-network-company-services-act-amends-tca-title-7-title-54-title-55-title-56-and-title-65/1135990/

3. http://time.com/3633469/uber-surge-pricing/.

4. "Shared mobility" is defined as "the shared use of a vehicle, bicycle, or other mode…that enables users to gain short-term access to transportation modes on an 'as-needed' basis…includ(ing) various forms of carsharing, bikesharing, ridesharing (carpooling and vanpooling) and on-demand ride services." Susan Shaheen, Nelson Chan, Apaar Bansal, and Adam Cohen, Transportation Sustainability Research Center, *Shared Mobility: Definitions, Industry Developments and Early Understanding.* (Nov. 3, 2015).
See: http://innovativemobility.org/wp-content/uploads/2015/11/SharedMobility_WhitePaper_FINAL.pdf

5. "Connected vehicle technology" is defined as a "multimodal initiative that aims to enable safe, interoperable networked wireless communications among vehicles, the infrastructure, and passengers' personal communications devices." *See* https://www.its.dot.gov/meetings/aeris__workshop.htm.

6. "Autonomous, or self-driving, vehicles" are defined as "those in which operation of the vehicle occurs without direct driver input to control the steering, acceleration, and braking and are designed so that the driver is not expected to constantly monitor the roadway while operating in self-driving mode." *See* https://www.transportation.gov/briefing-room/us-department-transportation-releases-policy-automated-vehicle-development.

7. Federal law provides a minimum set of rules and requirements applicable to limousine companies. However, individual states may levy stricter rules.

8. *Supra* note 1.

9. *See* Matthew W. Daus and Pasqualino Russo, *One Standard for All: Criminal Background Checks for Taxicab, For-Hire and Transportation Network Company (TNC) Drivers.* May 2015, MPA Newsletter of John Jay College of Criminal Justice, City University of New York (http://www.whosdrivingyou.org/wp-content/uploads/2015/06/background_check_report.pdf)

10. http://furmancenter.org/files/publications/FurmanCenterBIDsBrief.pdf

11. Examples of these cases include: Illinois Transp. Trade Ass'n v. City of Chica-

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go, 134 F. Supp. 3d 1108 (N.D. Ill. 2015) aff'd in part, rev'd in part, 839 F.3d 594 (7th Cir. 2016), cert. denied (U.S. Apr. 24, 2017); Newark Cab Ass'n v. City of Newark, 2017 WL 214075 (D.N.J. Jan. 18, 2017); Gebresalassie v. District of Columbia, 170 F. Supp. 3d 52 (D.D.C. 2016). In almost all of these cases, the taxicabs' Equal Protection claims were based on the disparity between two regulatory frameworks that were allegedly unequal.

12. *See* Checker Cab Philadelphia Inc. v. Philadelphia Parking Authority, No. 2:16-cv-04669 (E.D. Pa. June 6, 2017). Plaintiffs allege that defendants violated their constitutional rights by simultaneously enforcing strict regulations on taxis and failing to regulate TNCs at all. In reaching its decision, the court relied on Boston Taxi Owners Ass'n, Inc. v. City of Boston, 180 F. Supp. 3d 108 (D. Mass. 2016), wherein the court denied Boston's Motion to Dismiss, holding that the plaintiffs had adequately alleged an Equal Protection violation. (The case was ultimately dismissed on preemption and mootness grounds due to subsequent state legislation preempting Boston's ability to regulate taxis and TNCs (Boston Taxi Owners Assn, Inc. v. City of Boston, No. CV 15-10100-NMG, 2016 WL 7410777 (D. Mass. Dec. 21, 2016)).

13. In April 2017, the U.S. Supreme Court declined to take up the case *Illinois Transp. Trade Ass'n v. City of Chicago,* wherein Chicago taxi companies asked the Court to hear their arguments that city regulations governing ride-hailing platforms like Uber and Lyft violate the cab businesses' constitutional rights. *See* Illinois Transp. Trade Ass'n v. City of Chicago, 134 F. Supp. 3d 1108 (N.D. Ill. 2015) aff'd in part, rev'd in part, 839 F.3d 594 (7th Cir. 2016), cert. denied (U.S. Apr. 24, 2017).

14.A "rap back" or "hit notice" program will inform a designated entity when an individual whose fingerprints are retained by a criminal history repository after a fingerprint check is subsequently arrested. Fingerprints obtained after the arrest, are matched against a database; designated entities are then notified. *See* Bureau of Justice Statistics' Website, https://www.bjs.gov/index.cfm?ty=tdtp&tid=4.

15. Michael Barajas, *Uber Outlines Plan to Ensure All Drivers Comply with City Regs*, Houston Press (Apr. 17, 2015), http://www.houstonpress.com/news/uber-outlines-plan-to-ensure-all-drivers-comply-with-city-regs-7373113.

16. *See* Adam Vaccaro and Dan Adams, *Thousands of current Uber, Lyft drivers fail new background checks*, The Boston Globe (April 5, 2017), http://www.bostonglobe.com/business/2017/04/05/uber-lyft-ride-hailing-drivers-fail-new-background-checks/aX3pQy6Q0pJvbtKZKw9fON/story.html.

17. *See supra* note 7.

18. The FBI reports that the Advanced Fingerprint Identification Technology (AFIT), completed in February 2011, has increased identification performance and machine matching accuracy from 92 percent to more than 99 percent. https://www.fbi.gov/services/cjis/cjis-link/ngi-officially-replaces-iafis-yields-more-search-options-and-investigative-leads-and-increased-identification-accuracy.

19. *See also*, Report of the National Task Force to the U.S Attorney General (July 1999).

20. *See* notes 9 and 10.

21. *See* note 7.

22. http://mercatus.org/expert_commentary/expensive-licensing-can-drive-away-entrepreneurs; http://legislation.nysenate.gov/pdf/bills/2017/S2009C

23. http://www.njleg.state.nj.us/2016/Bills/A4000/3695_R1a.PDF; http://www.sos.arkansas.gov/rulesRegs/Arkansas%20Register/2016/march2016/126.04.16-002.pdf

24. http://www.legis.ga.gov/Legislation/20152016/153884.pdf

25. *E.g.*: In Seattle, the local TNC law provides that TNCs shall pay $0.10 per ride for all trips originating in Seattle to cover the estimated enforcement and regulatory costs of TNC licensing, vehicle endorsements and driver licensing. However, total TNC industry fees shall not exceed $525,000 in year one. (Seattle Municipal Code, Title 6, subtitle IV, §6.310.150 B.). In the state of Virginia, the fee to accompany an application for a permit is $100,000, and the annual fee to accompany an application for a renewal thereof is $60,000. (Code of Virginia, Title 46.2., Chapter 20, §46.2-2011.5). Colorado state TNC law provides for an annual permit fee of $111,250 (Colorado Revised Statutes, Title 40, §40-10.1-606. (2)).

26. In March 2015, a former Uber driver filed a lawsuit alleging that Uber failed to secure and safeguard its drivers' personally identifiable information, including names, driver's license numbers and other personal information, and failed to provide timely and adequate notice to Plaintiff and other class members that their private information had been stolen, in violation of California state law (Antman v. Uber Technologies, Inc., No. 3:15-cv-01175-JCS (N.D. Ca)). Uber subsequently filed a John Doe lawsuit in an attempt to identify the perpetrator of the breach (Uber Technologies, Inc. v. John Doe I, No. C 15-00908 LB (N.D. Cal. March 16, 2015)). In January 2016 Uber agreed with New York State Attorney General Eric Schneiderman to pay a $20,000 penalty for failure to provide timely notice of the breach to its drivers and the Attorney General's office, and to adopt data security protection practices. (*See* New York State Attorney General's Website, https://ag.ny.gov/press-release/ag-schneiderman-announces-settlement-uber-enhance-rider-privacy.)

27. A Base is a Taxi and Limousine Commission-licensed business for dispatching For-Hire Vehicles and the physical location from which For-Hire Vehicles are dispatched. A For Hire Base can be any of the following: (1) a Black Car Base, (2) a Livery Base (or Base Station), (3) a Luxury Limousine Base. *See* Rules of the City of New York, Title 35, **§ 59A-03(e)**.

28. As defined by New York General Business Law §899-aa(1)(a): "any information concerning a natural person which, because of name, number, personal mark, or other identifier, can be used to identify such natural person[.]"

29. *See* Rules of the City of New York, Title 35 **§59B-21(g)**.

30. *See* Rules of the City of New York, Title 35 **§**59B-21(h).

31. *See* Rules of the City of New York, Title 35 **§59B-21**(i).

32. http://www.nytimes.com/1996/05/11/nyregion/medallion-limits-stem-from-the-30-s.html.

33. FOIL laws usually have provisions for information determined to be exempt to disclosure for public policy reasons. For instance, New York State's FOIL Law contains exemptions for certain information including proprietary information received from a commercial enterprise. NYS Public Officers Law §87(2)(d). The newly adopted New York State TNC law exempts TNC drivers' records as an "invasion of personal privacy;" and information about drivers obtained for an audit is exempt from public disclosure.

34. http://www.pionline.com/article/20040405/PRINT/404050728/disclosure-exemption.

35. For example, all of New York City's for-

hire vehicle bases, including black car and luxury limousine bases, must have the capability to dispatch a wheelchair-accessible vehicle. See http://www.nyc.gov/html/tlc/html/faq/faq_access_veh.shtml.
36. *Section 504, Rehabilitation Act of 1973*. United States Department of Labor, *available at* http://www.dol.gov/oasam/regs/statutes/sec504.htm.
37. *Id.*
38 42 U.S.C. §12184: *Prohibition of discrimination in specified public transportation services provided by private entities, available at* http://codes.lp.findlaw.com/uscode/42/126/III/12184.
39. *See, e.g.*, New York City's commitment to providing a 50% wheelchair-accessible taxicab fleet. *Notice of Promulgation of Rules*. New York City Taxi and Limousine Commission, *available at* http://www.nyc.gov/html/tlc/downloads/pdf/newly_passed_rule_accessibility_and_surcharge.pdf.
40. *See, e.g.*, New York City's commitment to a 50% wheelchair-accessible fleet of green outer borough livery vehicles that can be utilized for street hails or for dispatched pre-arranged trips. http://www.nydailynews.com/new-york/nyc-taxis-accessible-tlc-plan-article-1.1817161
41. https://newsroom.uber.com/greater-accessibility/.
42. Matthew W. Daus and Jason R. Mischel, *Accessible Transportation Reform: Transforming The Public Paratransit And Private For-Hire Ground Transportation Systems*. 17 Transportation Lawyer 37 (2015), *available at* http://nuridetransportation-group.com/wp-content/uploads/2015/04/Accessible-Transportation-Reform-Study-Daus-Mischel-7.30.14-2.pdf.
43. In New York City, government-subsidized paratransit costs in excess of $60 per passenger. Point-to-point transportation via taxicab or sedan can be delivered for around $15 per passenger, resulting in savings in just one year of approximately $281,000,000. If applied throughout the US, taxpayer savings would be astronomical, as a 2013 Paratransit Survey conducted by Metro Magazine reported that 24.9 million riders were provided trips in 7,024 vehicles nationwide. *See id.*
44. In 2015, the International Association of Transportation Regulators published its *Model Rules for Accessible Taxicabs and For-Hire Vehicles*, including sections for Vehicle Accessibility, Driver Training, Accessible Dispatch Programs and App Technology and Financing Mechanism that proposes the implementation of such a lockbox to achieve the goals stated herein. http://www.windelsmarx.com/resources/documents/IATR%20Accessibility%20Model%20Regs%2012.11.15%20(11157211).pdf
45. Local government approves one or more private e-hail applications; all taxis are required to use at least one.
46 All taxi drivers are required to use the single e-hail application branded by the local government.
47. All taxi drivers are required to use the single e-hail application branded by the local government, while allowing the option to simultaneously utilize other private apps.
48. Local government approves multiple private sector apps able to communicate on an open platform, regardless of which company a vehicle is affiliated with, or which app the driver or customer used. The government can also develop or brand an app that communicates on the open platform.
49. Government branded platform ensures that every taxi uses e-hail capable technology that integrates with the platform, but does not require cross-dispatching.
50. *Mayor Emanuel Announces Arro and Verifone Selected to Provide Universal Taxi App Service in Chicago*, Mayor's Press Office Jan. 6, 2016, *available at* https://www.cityofchicago.org/city/en/depts/mayor/press_room/major_speeches/2016/january/Universal-Taxi-App.html.
51. Paul Cherry, *Montreal Taxi Bureau Seeks a Standard "Look" for its Fleet*, Montreal Gazette (Apr. 23, 2017), http://montrealgazette.com/storyline/montreal-taxi-bureau-seeks-a-standard-look-for-its-fleet.
52. *See* note 25, *supra.*
53. *What Does the Medical Examination Involve*, Federal Motor Carrier Safety Administration, https://www.fmcsa.dot.gov/faq/what-does-medical-examination-involve (last accessed June 19, 2017).
54. Who must Comply, Federal Motor Carrier Safety Administration, https://www.fmcsa.dot.gov/regulations/hours-of-service (last accessed June 19, 2017).
55. *Certification of Safety Auditors, Safety Investigators and Driver/Vehicle Inspectors*, Federal Motor Carrier Safety Administration, https://www.fmcsa.dot.gov/international-programs/certification-safety-auditors-safety-investigators-and-driverve-hicle (last accessed June 19, 2017).

